Least Restrictive Environment Placements: The Impact of the Endrew F. and L.H. Decisions

By Helen Carroll, Attorney

On August 20, 2018, the Sixth Circuit affirmed a decision by the United States District Court, Eastern District of Tennessee, finding that the Hamilton County Department of Education failed to provide a student with a disability an educational placement in his least restrictive environment ("LRE") in violation of the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). *L.H. v. Hamilton County Department of Education*, Case Nos. 17-5989; 18-5086, 2018 WL 3966517 (6th Cir. Aug. 20, 2018).

At the time the dispute arose, L.H. was a ten year old boy with Down Syndrome. From Kindergarten through second grade, he was placed in the general education classroom with supplementary aids and services, including specialized instruction with an Intervention Specialist (in a one-to-one setting), in accordance with the provisions of his individualized education program ("IEP"). While L.H. made some progress on the goals and objectives in his IEP in the mainstreamed setting, when the IEP team met to develop a new IEP for third grade, his teachers believed he could not keep pace with the curriculum and recommended placement in a Comprehensive Development Classroom (CDC) in a different school. Teachers told Parents that L.H. was a disruption in the classroom and that he was performing academically at a level far below his peers. Because L.H. would, in the CDC classroom, spend most of his school day without interaction with his regular education peers, Parents rejected the proposed IEP and placed L.H. in a Montessori School. At their own expense, Parents provided L.H. with a one-to-one aide to help keep him on task. Parents then filed for an administrative due process hearing and sought, as part of their complaint, reimbursement for the cost of the private school placement.

The due process hearing officer ruled in favor of the school district, finding that placement in the CDC was appropriate. Parents appealed and the U.S. District Court reversed, finding that L.H.'s placement in the CDC was more restrictive than necessary and therefore improper, but also found that the Montessori School was not an appropriate placement. On that basis, the District Court denied Parents' request for reimbursement. Parents and the School appealed.

The Sixth Circuit Court of Appeals noted that, "[t]he LRE is a non-academic restriction or control on the IEP – separate and different from the measures of substantive educational benefits – that facilitates IDEA's strong preference for mainstreaming." The Court, citing its 1983 decision in *Ronker v. Walter*, reiterated that a student can only be removed from the regular education class when: 1) the student would not benefit from regular education; 2) any regular-class benefits would be far outweighed by the benefits of special education; or 3) the student would be a disruptive force in the regular class. The school district argued that the first exception in the *Ronker* standard was overruled by the recent U.S. Supreme Court ruling in *Endrew F. v. Douglas County*, which held that providing "some benefit" to a student with a disability was not enough. In *Endrew F.*, the Supreme Court held that "a public school must provide an education program "reasonably calculated to allow the student to make progress appropriate in light of the child's circumstances." The Sixth Circuit segregated its analysis of LRE issues and those applicable to whether the substantive elements of the IEP, as reviewed in *Endrew F.*, provided a program designed to provide for meaningful educational progress. The Court further noted, a student need not "master" the general education curriculum for mainstreaming to remain a viable option. In finding that the school district violated the IDEA and ruling in the Parents' favor, the Court further found that placement at the Montessori School was appropriate and remanded the case for a determination of the amount owed to Parents by the school in terms of tuition reimbursement and costs. The money payable to Parents will be significant. L.H. in now fifteen (15) years old and has attended the Montessori School continuously during the pendency of legal proceedings.

In light of this decision, schools and IEP teams should cautiously approach discussion about segregated placement options and carefully consider parents' expectations for mainstreaming in cases where placement in the general education setting can be successful with extra supports and services.

Please contact any of the listed attorneys should you have any questions regarding the subject matter of this alert.

Helen Carroll
330.571.7608 | hcarroll@ralaw.com

Diana Feitl
216.615.4838 | dfeitl@ralaw.com

Fred Compton
330.849.6610 | fcompton@ralaw.com

Leighann Fink
330.849.6633 | lfink@ralaw.com